IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27305-9-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JACOB JAMES ZIRKLE,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, J. — Jacob Zirkle appeals his convictions for possession of psilocybin mushrooms, possession of marijuana, and use of drug paraphernalia. Mr. Zirkle contends the court erred by admitting evidence of the psilocybin mushrooms obtained during the search of Mr. Zirkle's tent, after Mr. Zirkle consented to the search, but without *Ferrier*[1] warnings. Under *Ferrier*, police must advise a person that he or she may refuse to consent or may revoke consent, and may limit the scope of his or her consent. We conclude that *Ferrier* warnings were not required and that Mr. Zirkle voluntarily consented to the search of his tent. Accordingly, we affirm the convictions.

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[1] *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998).

FACTS

During the early morning hours of May 28, 2006, after a concert at the Gorge Amphitheater, Washington Department of Fish and Wildlife officers conducted a walkthrough patrol of the Grant County Public Utility District Sand Hollow Campground. The Sand Hollow Campground is an area open to the public for camping without charge. Mr. Zirkle stated that he and his friends had been staying at the campsite for three to four days.

At about 2:00 a.m., Captain Chris Anderson observed a flashing light coming from a tent. Using night vision goggles, Captain Anderson saw what appeared to be a cigarette lighter being used to light a suspected marijuana pipe. According to Captain Anderson, the campsite consisted of two tents placed diagonally to each other, about 10 feet apart, with a fire pit in the middle. There were chairs around the fire pit. Mr. Zirkle stated there were four chairs around the fire pit, a kitchen table with pots and pans, and some coolers on the ground.

Captain Anderson and five other officers walked up to the first tent and heard several individuals inside. Captain Anderson heard one female inside the tent say, "'[w]hat good reefer.'" Clerk's Papers at 26. Captain Anderson explained that this

comment was made to describe marijuana. Several other people inside the tent were also heard talking about marijuana. A few minutes later, the tent was unzipped and the people inside the tent came out. Captain Anderson, Officer Larry Hahn, and Officer Mike Jewell smelled the strong odor of burning marijuana coming from inside the tent. The officers asked for the pipe, which was produced by one individual. The officers also recovered a baggie containing marijuana from the tent.

The suspects were asked to take a seat on several chairs surrounding the campfire. Officer Jewell then advised the suspects, including Mr. Zirkle, of their constitutional rights. Mr. Zirkle acknowledged that he understood his rights and that he was willing to speak.

Captain Anderson went to the second tent at the campsite and asked who owned the tent. Mr. Zirkle stated that it was his tent. Captain Anderson described the tent as being six-by-six feet or eight-by-eight feet with a door that was zippered shut. Officer Hahn described the tent as a six-person tent with a full door and perhaps windows. The door and windows were zippered.

Captain Anderson had Mr. Zirkle step over to the second tent and asked if there were any weapons inside. Captain Anderson also asked if he could look inside the tent. According to Captain Anderson, Mr. Zirkle stated he had no weapons and that Captain

Anderson could look inside the tent. Mr. Zirkle said that inside the tent he had only a sleeping bag and clothes.

Captain Anderson unzipped the door of the tent and looked through the flap into the tent. Captain Anderson immediately observed two clear plastic baggies containing mushrooms on top of Mr. Zirkle's clothes bag. Captain Anderson retrieved the baggies. Captain Anderson described the inside of the tent as fairly clean with a sleeping bag in the center and clothes on the floor. Mr. Zirkle stated that the officer entered the tent and that Mr. Zirkle's clothes were in the rear left corner of the tent. The officer looked through Mr. Zirkle's belongings.

Mr. Zirkle then admitted that the mushrooms were his, that he bought them locally, and that he knew they were illegal to possess. Mr. Zirkle also admitted to smoking a glass marijuana pipe inside the first tent.

The court held that *Ferrier* warnings—requiring officers to inform a defendant of the right to refuse, revoke, or limit consent—were not required to be given to Mr. Zirkle prior to Captain Anderson entering the tent. The court found that Mr. Zirkle voluntarily consented to the search of his tent because there was no evidence of coercion in obtaining consent. The court also found that Mr. Zirkle knowingly, voluntarily, and intelligently waived his constitutional rights, and that Mr. Zirkle was found to be in possession of

psilocybin mushrooms and marijuana under 40 grams, and to have used drug paraphernalia. The trial court held that Mr. Zirkle's tent was not a residence or home to which *Ferrier* warnings applied because of the transient manner in which people use a campground. As a result, the court denied Mr. Zirkle's motion to suppress and held that Mr. Zirkle's statements following the search of the tent were admissible. This appeal followed.

ANALYSIS

Ferrier *Warnings—Public Campsite.* Mr. Zirkle contends that the officers' failure to provide *Ferrier* warnings prior to searching his tent was a violation of article I, section 7 of the Washington Constitution and, therefore, the evidence obtained from Mr. Zirkle's tent should be suppressed.

Under article I, section 7 of the Washington Constitution, warrantless searches are per se unreasonable. *State v. Khounvichai*, 149 Wn.2d 557, 562, 69 P.3d 862 (2003). The State bears the burden of showing that the warrantless search falls within one of the exceptions to the warrant requirement. *Id.* Consent to search is one exception to the warrant requirement. *State v. Holmes*, 108 Wn. App. 511, 516, 31 P.3d 716 (2001). The State must show that the consent was freely and voluntarily given. *State v. O'Neill*, 148 Wn.2d 564, 588, 62 P.3d 489 (2003).

State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998) requires officers to provide specific warnings to individuals prior to engaging in a knock and talk procedure if the consent is to be considered voluntary. A knock and talk occurs when

> not having obtained a search warrant, police officers proceed to premises where they believe contraband will be found. Once there they knock on the door and talk with the resident, asking if they may enter. After being allowed to enter, the officers then explain why they are there, that they have no search warrant, and ask permission to search the premises.

State v. Bustamante-Davila, 138 Wn.2d 964, 976-77, 983 P.2d 590 (1999) (footnotes omitted).

Under *Ferrier*,

> when police officers conduct a knock and talk for the purpose of obtaining consent to search a home, and thereby avoid the necessity of obtaining a warrant, they must, prior to entering the home, inform the person from whom consent is sought that he or she may lawfully refuse to consent to the search and that they can revoke, at any time, the consent that they give, and can limit the scope of the consent to certain areas of the home.

Ferrier, 136 Wn.2d at 118. *Ferrier* held that these warnings are required because a knock and talk is inherently coercive. *Id.* at 115.

In *Ferrier*, police officers acted on a tip that a marijuana grow operation was occurring in Debra Ferrier's home. *Id.* at 106. Police officers went to Ms. Ferrier's home, hoping to gain consent to search. *Id.* at 106-07. The officers intended to use a knock and talk procedure. *Id.* at 107. When the officers went to Ms. Ferrier's home,

they were all armed, and each wore a black "raid jacket" which said "police" on the front and back. *Id.* Two of the officers knocked on the door, identified themselves as police officers, and were invited inside. *Id.* Two other officers proceeded to the back entrance of the home. *Id.* Once inside, the two officers who approached the front door radioed the officers in the back of the house, telling them to enter. *Id.* at 108. In Ms. Ferrier's living room, the officers noticed two infant children. *Id.*

The officers then informed Ms. Ferrier that they had information that she was growing marijuana and that they wanted to search the house. *Id.* Ms. Ferrier signed a consent to search form but was not told that she had the right to refuse consent. *Id.* The officers found marijuana plants in the home. *Id.* at 109. The court held that this procedure violated article I, section 7 of the Washington Constitution, and implemented the *Ferrier* warning requirements to ensure the voluntariness of consent. *Id.* at 114-15.

The *Ferrier* requirements are limited to the use of the knock and talk procedure. *Bustamante-Davila*, 138 Wn.2d at 980. The intent of the officer, and whether the officer's intentions are deceptive, is the focus of this determination. *State v. Overholt*, 147 Wn. App. 92, 96, 193 P.3d 1100 (2008).

Here, the officers were not engaged in a knock and talk procedure and, thus, we do not decide whether *Ferrier* applies to tents. First, this situation lacked the coercive

element that was so apparent in *Ferrier*. The officers here did not enter the tent by conducting a ruse, and then once inside, reveal their true intentions. Captain Anderson did not even open the tent until Mr. Zirkle consented to the search of the tent. Second, the record shows that Captain Anderson intended to search for weapons to ensure officer safety, rather than to search for contraband or evidence of a crime. Captain Anderson asked if he could look in the tent for weapons, and Mr. Zirkle consented. Captain Anderson testified that weapons were his sole focus while looking inside the tent. There is no evidence of any intent to deceive.

In the absence of a knock and talk, the court is to apply the totality of the circumstances test. *State v. Thang*, 145 Wn.2d 630, 637, 41 P.3d 1159 (2002) (quoting *Bustamante-Davila*, 138 Wn.2d at 981). The court reviews the consent finding de novo; but the trial court's findings are given great weight. *State v. Rodriguez*, 20 Wn. App. 876, 878, 582 P.2d 904 (1978). Unchallenged findings are verities on appeal. *State v. Acrey*, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

Several factors may be considered when determining whether consent is voluntary: (1) whether *Miranda*[2] warnings were given, (2) the level of education and intelligence of the individual, and (3) whether he or she has been advised of the right to consent.

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

O'Neill, 148 Wn.2d at 588. However, courts apply the totality of circumstances "rather than merely applying a multifactor analysis." *Id.* at 589. Voluntary consent can be given in a custodial situation; but the restraint of a person is a factor to consider. *Id.*

Here, Mr. Zirkle was detained, but not handcuffed. He was sitting by a campfire at his campsite. Mr. Zirkle was read his *Miranda* rights. He stated that he understood the warnings, and that he would give up these rights to speak with the officers. None of the officers noticed any slurred speech or other indicators that Mr. Zirkle did not fully understand these rights. Mr. Zirkle consented to Captain Anderson looking in the tent for weapons. There is no evidence that he was asked multiple times or that he was threatened. While there were a number of officers present, this alone is not enough to tilt the totality of the circumstances to involuntary consent. Considering all of the relevant factors, Mr. Zirkle's consent was voluntary.

In summary, *Ferrier* warnings were not required because no knock and talk procedure was used by the officers. Mr. Zirkle voluntarily consented to the search after receiving his *Miranda* warnings.

Suppression of Mr. Zirkle's Statements. Mr. Zirkle contends that his statements made following the consensual search of his tent were inadmissible.

If a search or seizure violates an individual's constitutional rights, evidence found

as a result of that search or seizure must be suppressed under the exclusionary rule. *State v. Rose*, 146 Wn. App. 439, 458, 191 P.3d 83 (2008). In addition, any statements made as a result of the unlawful search must also be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 484-85, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

Because *Ferrier* warnings were not required and Mr. Zirkle's consent was not otherwise involuntary, Mr. Zirkle's statements were admissible. Therefore, the court properly denied suppression of Mr. Zirkle's statements.

We affirm Mr. Zirkle's convictions.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, J.

WE CONCUR:

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Schultheis, C.J. Korsmo, J.